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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Carol Mattey, Esq.
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 98-141, ASD File No. 99-49

Dear Ms. Mattey:

In our meeting on April 25, CompTel explained that our position in this proceeding was that the equipment for which SBC was seeking an interpretation, waiver, or modification was advanced services equipment within the meaning of the merger conditions governing SBC's provision of advanced services.[1] CompTel also explained that the integrity of the merger conditions would best be protected if the Commission were to simply deny SBC's request.

The effect of such a denial, along with an explanation that SBC could not execute its advanced services strategy in a manner that discriminates in favor of its affiliate, would be that the SBC affiliate, along with every other unaffiliated carrier, would have to request and procure basic network services from the SBC ILEC on a non-discriminatory basis. Thus, if SBC were forced to rigorously comply with the conditions as written, they would have a powerful incentive to ensure that all providers had access to collocation, or, at a minimum, that the equipment used by the SBC affiliate was compatible with the equipment used by those carriers who might obtain limited collocation space ahead of SBC's affiliate (which one would expect if resources were provisioned on a non-discriminatory basis). Therefore, CompTel continues to believe that rejecting SBC's request is the course of action which best protects the integrity of Commission Orders, the interests of those competitors who may have accelerated their own advanced services

[1] *See* In Re Applications of Ameritech Corp. and SBC Communications For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines, *Memorandum Opinion and Order*, CC Docket No. 98-141, (rel. Oct. 8, 1999) Appendix C [hereinafter *"Merger Conditions"*].

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deployment in SBC's region in reliance on the merger conditions, and consumers who would have ultimately received the benefits of those investments.

However, in our meeting on the 25th, you also asked whether there were any conditions which could accompany a grant of SBC's request, and would still preserve the procompetitive goals which motivated the original conditions. CompTel believes that conditions, which address these concerns, do exist. These conditions are best understood within the context of this proceeding.

As we have explained previously in this proceeding, it is CompTel's belief that SBC's proposed Project Pronto deployment plans plainly violate the terms of the merger conditions. Through a radical redesign of its network during the 180 day "transition" period, SBC egregiously exceeded the scope of this limited exception. Moreover, the scope on which SBC has abused the limited privileges provided by the Commission in order to "permit an orderly transition to the steady-state provisioning of Advanced Services. . ."[2] has defeated the procompetitive conditions governing the "steady-state" period. Indeed, if SBC had any intention of scrupulously complying with the Commission's Order, it could have easily requested the same sort of interpretation it requests here, but *before* it had begun deployment of Project Pronto. Perhaps SBC reasoned that it is easier to ask forgiveness than permission.

In recognition of SBC's substantial, though premature, investment in Project Pronto, it is understandable that the Commission would seek to prevent waste of committed resources. However, at the same time, the Commission must also recognize that many CompTel Members, and other competitors, have committed substantial resources of their own to deploy advanced services facilities in SBC's Region. Many of these carriers accelerated deployment plans in reliance on the Comission's assertion that the Affiliate (created through the merger conditions) "will wait in line for collocation, petition to open closed offices, and otherwise deal with the same collocation and OSS implementation problems experienced by CLECs."[3] These carriers' investments also deserve consideration, and any conditions adopted by the Commission in this proceeding must serve to prevent waste of these assets. Indeed, principles of equity demand that the entity best situated to have prevented a loss be required to shoulder losses caused to others through a failure to exercise prudence.

Thus, it is in this context that CompTel proposes the attached conditions, which, while accommodating SBC's basic Pronto design and architecture, are designed to ensure that consumers continue to receive the benefits of the substantial investments in advanced and traditional competitive telecommunications assets already deployed, or committed to deployment, by competitive carriers. Finally, these ancillary conditions are designed to

[2] *Merger Conditions*, Appendix C, ¶ I.4.n.
[3] *Merger Conditions*, ¶ 363, n. 674.

reinstate the procompetitive benefits which the original merger conditions were designed to facilitate in the advanced services market, while minimizing negative collateral effects in other telecommunications markets in the SBC region.

Sincerely,

Jonathan Lee
Vice President
Regulatory Affairs

cc: Ms. Magalie Salas (2 copies)
Mr. Lawrence Strickling
Mr. Anthony Dale
Ms. Dorothy Attwood
Ms. Rebecca Beynon
Mr. Kyle Dixon
Mr. Jordan Goldstein
Ms. Sarah Whitesell
Mr. Paul Mancini

CompTel Proposed Pronto Waiver Conditions

1) A new "transition" period should created for the purpose of "transitioning" competitive carriers onto the Pronto network architecture. During this period, neither SBC's ILEC nor its Affiliate, will be able to market advanced services to new customers who are served by any central office (or associated remote terminals) in which competitive carriers are currently deployed, or in which competitive carriers have sought collocation until the following:

    a) SBC installs equipment in the remote terminal that will allow facilities-based providers of both voice and data to provision such service from equipment collocated in the central office over a single sub-loop to the end-user premise;
    b) Provisioning and ordering procedures are developed which allow competitors to provide integrated voice and data services over a single subloop into the end-user premise;
    c) Prices, based on forward looking costs, are developed for all new elements associated with the new network architecture;
    d) SBC must ensure that existing, central office-based OSS interfaces for repair and maintenance will continue to be accessible. For example, competitors must continue to be able to perform remote mechanized line tests on the entire "loop" from the central office to the customer premise;
    e) SBC must contract with its remote terminal vendor to make the modifications necessary to provide compatibility between the SBC remote terminal equipment and the "cards" of other vendors of advanced services equipment in the SBC region;
    f) If the obligation imposed by sub-paragraph d is not technically feasible, SBC cannot market to new advanced services customers until SBC's remote terminal equipment vendor has developed operable "cards" capable of supporting all versions of DSL service, including: HDSL, SDSL, G.Lite splitterless DSL as well as POTS service;
    g) Once the remote terminals, identified in the body of paragraph 1 above, have been brought into compliance with the requirements of this paragraph, all other remote terminals must comply with the requirements of this paragraph within one year of the effective date of the Commission Order approving these conditions.

2) Collocation Requirements. Interconnection must be made available at any technically feasible point in the SBC network, regardless of whether the proposed point of interconnection is owned by the SBC ILEC, or its Affiliate. Additionally, these other conditions apply to all SBC central offices and sub-tending remote terminals:

    a) Remote terminal collocation, regardless of physical, virtual, cageless, or shelf/rack, will be provided wherever space permits;
    b) Any equipment used to provide any telecommunications service to customers served through the remote terminal architecture is deemed "necessary" for

purposes of qualifying for central office collocation when remote terminal collocation is infeasible;

c) ADLU cards used to provide any telecommunications service are necessary for interconnection at the remote terminal, and may be physically or virtually collocated at the remote terminal;
d) CLEC-to-CLEC interconnection, where efficient, will, if deemed necessary to facilitate interconnection by the Common Carrier Bureau, be allowed and facilitated by SBC.

3) Unbundled Network Elements. SBC shall make available the following network elements on either a "leave combined",or separated, basis as requested by the competitor:

   a) Unbundled network elements necessary to provide a central office-powered 8 db passive signal along a dedicated virtual path from the central office-served fiber through the remote terminal to the end user. This requirement includes all associated elements from the remote terminal through the CO which are necessary for a facilities-based competitor to provide integrated voice and data service;
   b) Line sharing of the subloop between two CLECs, or the CLEC and the ILEC is reasonable, and must be provided;
   c) All features of the SBC remote terminal equipment must be available, if technically feasible, at cost-based prices. This requirement includes permanent virtual circuits of any quality of service of which the equipment is capable of providing;
   d) A virtual dedicated transmission path on the SBC-owned fiber feeder serving the remote terminal must be made available to competitors at cost-based prices;
   e) All elements, previously identified by SBC in this proceeding, necessary to provide a data service.

4) Preservation of Existing Facilities. All existing copper feeder plant must be maintained for the remainder of its forecasted economic life. In addition:

   a) Capacity on existing copper feeder plant must be made available on a *preferred* basis to those carriers who are not collocated in the remote terminal;
   b) No customer currently served by any competitive carrier over copper loop technology may be migrated to fiber-based plant without the permission of the competitive service provider.